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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOHNNY KHALIL ABYAD,

Petitioner,

v.

Markwayne MULLIN, Secretary,
Department of Homeland Security; Todd
BLANCHE; Attorney General;
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Lance
VENTURELLA, Acting Executive
Director of ICE Enforcement and Removal
Operations (ERO); and Christoper
CHESTNUT, Warden of the California
City Detention Center,

Respondents.

Civil Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. JOHNNY KHALIL ABYAD (hereinafter, "Petitioner") has been residing in the United States in a lawful status since in or about August 1975, when he was only approximately two (2) years old.
2. He had been a legal permanent resident (hereinafter, "LPR") of the United States until on or about May 15, 2008.
3. On or about February 23, 2007, Petitioner was convicted of a violation of Health and Safety Code (hereinafter, "HS") Section 11351, possession/purchase for sale of a controlled substance.
4. He was then later issued a notice to appear (hereinafter, "NTA") before an immigration judge (hereinafter, "IJ").
5. Petitioner was charged with having committed an aggravated felony and controlled substance (hereinafter, "C/S") violation, which render him deportable under 8 USC §§ 1227(a)(2)(A)(iii) and (a)(2)(B)(i), respectively.
6. As a result, Petitioner was ordered removed on or about May 15, 2008.
7. He was subsequently placed on order of supervision (hereinafter, "OSUP") with Immigration and Customs Enforcement (hereinafter, "ICE").
8. On or about December 23, 2025, however, ICE detained Petitioner.
9. He has been detained at the California City Detention Center ever since.

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2 10. In the interim, Petitioner, through his attorney of record, Jose R. Jordan, Esq.
3 (hereinafter, "Present Counsel"), filed a motion to reopen (hereinafter,
4 "MTR") his removal proceedings with the IJ on the basis of his eligibility
5 for asylum, withholding, and protection under the Convention Against
6 Torture (hereinafter, "CAT").
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9 11. Specifically, Petitioner pointed to his being a Palestinian who is both an
10 Israeli citizen and Jordanian national; who was brought to this country as a
11 very young child, speaks neither Hebrew nor Arabic, and has not been back
12 to the Middle East since he was brought to this country; and who feared
13 persecution by Palestinian terrorists and/or the Israeli military, *inter alia*.
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16 12. The IJ, nonetheless, denied Petitioner's MTR on or about February 18, 2026.

17 13. On or about March 18, 2026, he filed appeal, via Present Counsel, with the
18 Board of Immigration Appeals (hereinafter, "BIA" or "Board"), and said
19 appeal remains pending.
20

21 14. Five (5) days prior thereto, however, on or about March 13, 2026, Petitioner,
22 through Present Counsel, filed a motion to vacate (hereinafter, "MTV") the
23 above-referenced criminal offense on or about March 13, 2026.
24

25 15. On or about June 12, 2026, the criminal court granted his MTV pursuant to
26 California Penal Code (hereinafter, "PC") Section 1473.7, specifically, for
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1 failure to provide proper immigration advisements (i.e., a deprivation of his
2 Due Process rights) at the time Petitioner entered his plea, and dismissed the
3 charge in the interest of justice under PC § 1385.¹
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5

6 16. Put differently, since the vacatur of Petitioner's conviction was based on
7 constitutional and statutory grounds, and since it was granted *nunc pro tunc*,
8 it eliminates any immigration consequences that would have attached to it.
9
10 *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003).
11

12 17. Accordingly, since the sole bases for Petitioner's being deemed deportable
13 (i.e., his having been convicted of controlled substance crime and an
14 aggravated felony) have been invalidated *nunc pro tunc*, this means
15 retroactively he was not deportable at the time he was ordered removed, has
16 retroactively reverted to his status as an LPR, and cannot be removed from
17 the United States, *inter alia*.
18
19

20 18. The Board, then, should reopen and remand his proceedings to the IJ with
21 instructions to dismiss said proceedings against Petitioner.
22

23 19. Nevertheless, in the more than six (6) months that Petitioner has been
24 detained, he has not been scheduled for a bond hearing, including for a
25 *Rodriguez* bond hearing.
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27 ¹ Naturally, Petitioner, via Present Counsel, has supplemented his pending Board
28 appeal with evidence of the vacatur of his C/S offense.

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2 20. Nor has Petitioner been scheduled for any type of hearing, bond-related or
3 otherwise, before the immigration judge.

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5 21. As such, Petitioner seeks an order of declaratory and injunctive relief and set
6 aside relief under the Administrative Procedure Act (hereinafter, "APA")
7 requiring that he be provided a bond hearing before an immigration judge.
8

9 **JURISDICTION AND VENUE**

10 22. This Court has jurisdiction under 28 U.S.C. § 2241 (federal *habeas* statute);
11 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory
12 judgment); United States Constitution Article I, Section 9 (Suspension
13 Clause).
14

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16 23. Venue properly lies within the Eastern District of California under 28 U.S.C.
17 § 1391, because this is a civil action in which Respondents are agencies of
18 the United States, Petitioner is detained in this District, and a substantial part
19 of the events or omissions giving rise to this action occurred in the District.
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PARTIES

24. Petitioner resides in Menifee, California and is currently detained at the California City Detention Center.

25. Respondent Markwayne Mullin is the Secretary of DHS, and is sued in his official capacity. The Secretary of Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).

26. Respondent Todd Blanche is the Attorney General (hereinafter, "AG") of the United States and is sued in his official capacity as the head of the DOJ. The AG is responsible for the fair administration of the laws of the United States.

27. Respondent EOIR is a component agency of the DOJ responsible for conducting removal and bond hearings of noncitizens. EOIR is comprised of a lower adjudicatory body administered by Immigration Judges and an appellate body known as the BIA.

28. IJs issue bond redetermination hearing decisions, which are then subject to appeal to the Board.

29. Respondent Todd Lyons is the Acting Director of ICE and is sued in his official capacity. ICE is responsible for the Petitioner's detention.

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2 30. Christopher Chestnut is the Warden of the California City Detention Center
3 and is sued in his official capacity. Respondent Chestnut is also responsible
4 for the detention of Petitioner.
5

6 **LEGAL BACKGROUND**

7 31. The Immigration and Nationality Act (hereinafter, "INA" or "the Act")
8 prescribes two (2) basic forms of detention for noncitizens in removal
9 proceedings that are relevant to Petitioner's case.
10

11 32. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard
12 non-expedited removal proceedings before an immigration judge. *See* 8
13 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond
14 hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a),
15 1236.1(d), while noncitizens who have been arrested, charged with, or
16 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C.
17 § 1226(c).
18
19

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21 33. Second, the Act also provides for detention of noncitizens who have been
22 previously ordered removed, including individuals in withholding-only
23 proceedings, *see* 8 U.S.C. § 1231(a)–(b).
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FACTS

34. Petitioner has resided in the United States since on or about August 1975 and lives in Menifee, California.

35. In or about December of 2025, he was arrested by immigration authorities in Southern California.

36. Petitioner has been detained ever since without a bond hearing before an IJ.

37. He has been steadily employed throughout his tenure in this country; Petitioner has been a police vehicle upfitter/installer since 2009.

38. He has a long-term United States citizen (hereinafter, "USC") girlfriend, who is an employee of the United States Navy.

39. Petitioner also has three (3) USC children, and an elderly USC widow-mother. (His USC father died in January of this year.) He also has three (3) USC siblings.

40. Petitioner is neither a danger to others nor a flight risk.

41. Though Petitioner has an appeal pending with the BIA, it is highly likely that the Board will simply affirm the IJ's decision.

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CAUSES OF ACTION

COUNT I

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Bond Hearing

42. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

43. The mandatory detention provisions at 8 USC §§ 1226(c) and 1231(a)(b) should not apply to Petitioner. On the one hand, the criminal offense on which his mandatory detention was predicated has been vacated. On the other hand, Petitioner has been detained for at least six (6) months, in which case he is entitled to a *Rodriguez* hearing. Alternatively, ICE has various alternatives to detention (hereinafter, “ATDs”) it could and should provide him, especially in light of the traditional bond factors (i.e., eligibility for relief from removal, lack of flight risk/sufficient familial and economic ties to the area, not a danger to the community, *inter alia*).

44. The application of § the above-referenced sections to bar Petitioner from receiving a bond redetermination hearing before an immigration judge thus violates the Immigration and Nationality Act.

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COUNT II

Violation of the Administrative Procedure Act

Unlawful Denial of Bond

45. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

46. The application of 8 USC §§ 1226(c) and 1231(a)(b) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT III

Violation of Procedural Due Process

47. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

48. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

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2 49. Petitioner has a fundamental interest in liberty and being free from official
3 restraint.

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5 50. The government's detention of Petitioner without a *bona fide* bond
6 redetermination hearing to determine whether he is a flight risk or danger to
7 others violates his right to due process.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner respectfully requests that this Court:

- 11 a. Assume jurisdiction over this matter;
12
13 b. Declare that the refusal to allow Petitioner a bond redetermination
14 hearing before an IJ violates the INA, APA, and Due Process;
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16 c. Issue a writ of *habeas corpus* requiring that Respondents release him
17 or provide the bond hearing to which he is entitled within fourteen
18 (14) days;
19
20 d. Set aside Respondents' unlawful detention policy under the APA, 5
21 U.S.C. § 706(2);
22
23 e. Award reasonable attorneys' fees and costs pursuant to the Equal
24 Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any
25 other applicable law; and
26
27 f. Order further relief as this Court deems just and appropriate.
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2 Dated: July 10, 2026

3 Respectfully Submitted,

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5 /s/Jose R. Jordan, Esq.

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